



Associated Oregon Industries

1149 Court Street NE
Salem, OR 97301-4030

telephone: 503.588.0050
portland: 503.227.5636
statewide: 800.452.7862
fax: 503.588.0052

www.aoi.org

September 6, 2016

Environmental Protection Agency (EPA)
ATTN: Harbor Comments
U.S. EPA
805 SW Broadway, Suite 500,
Portland, OR 97205

harborcomments@epa.gov

**Subject: Associated Oregon Industries comments on EPA
Proposed Plan Remedy for Portland Harbor**

Dear EPA Region 10:

Associated Oregon Industries (AOI) appreciates the opportunity to provide these comments on EPA's Proposed Plan for cleanup of the Portland Harbor. AOI is Oregon's largest comprehensive business association representing nearly 1,500 member businesses that employ over 200,000 Oregonians. In short, our membership is comprised of large and small companies from all business classifications in Oregon. AOI is committed to growing Oregon's economy, quality jobs for our citizens, and healthy communities.

The cleanup of Portland Harbor is of utmost importance to AOI. One of AOI's core principles is to preserve the high-quality of the Oregon environment while supporting a strong state economy. EPA stands on the precipice of a decision that, if made wisely, can achieve both of those things.

AOI knows that EPA understands the complexity of the environmental resource that Portland Harbor is. AOI hopes EPA also understands that the Portland Harbor is of critical importance as an economic resource and life blood to the City of Portland, all Oregonians, and the West coast. Portland Harbor is Oregon's largest seaport and a vital employment area: home to thousands of valuable high-wage, high-benefit jobs that have been providing middle income jobs to diverse communities for more than a century. A 2013 Value of Jobs Coalition study showed that about 300 local companies, mostly small businesses, provide 42% of the goods and services purchased by just five of the large marine industrial businesses in the area. Those companies depend on the river, and both their employees and other businesses throughout the region depend on them in turn.

The Portland working harbor includes public and private marine terminals, industrial parks, and other commercial and warehousing businesses. The Port of Portland sponsored a study that presents the economic impacts of the terminals and firms located within Portland Harbor.¹

¹ http://www.workingwaterfrontportland.org/pdfs/Portland_Working_Harbor_EI_Study.pdf

Key findings of this study include:

- Approximately 30,000 people are directly employed in the working harbor, with an average salary of \$51,000.
- As the result of local purchases by directly-employed workers, an additional 19,000 induced jobs are supported in the local economy to provide goods and services to those directly employed.
- 16,000 indirect jobs also are supported in the local economy as the result of local purchases of goods and services by the firms located within the Portland working harbor. These purchases could include equipment, maintenance, repair, and supplies.
- A total of \$413 million in state and local tax revenue was generated by activity in the Portland working harbor in Fiscal Year 2015.

Also very important to AOI is that, because of its statewide role, the Portland Harbor is a crucial gateway to global markets for businesses throughout the state of Oregon, not just in the Portland area. Thus, EPA's decision will impact the entire state. If EPA chooses a cleanup plan that achieves necessary environmental goals without unduly burdening local businesses and governments (either through the unnecessary high cost of the remedy, or by the burden of restrictions on those businesses during unduly long project construction), Oregon's business economy can continue to compete. On the other hand, if EPA chooses a remedy that costs more than these entities can afford or that makes doing business in the harbor less cost-competitive, Oregon as a whole will suffer.

Key concerns with EPA's Proposed Plan

AOI believes any cleanup remedy must be rational, able to be implemented and pragmatic. Unfortunately, EPA's Proposed Plan and the underlying Feasibility Study largely fail to meet these thresholds. Overall, AOI cannot accept EPA's Proposed Plan because it underestimates costs, overestimates economic gains and undermines the role of the State of Oregon in the cleanup. An appropriate cleanup is a plan that is protective, cost effective, understandable, and can be implemented in a reasonable amount of time.

a. Costs

EPA's own projected cost of \$800 million to clean up Portland Harbor is significant itself. We are very concerned that a number of engineering and consulting firms knowledgeable in cost estimating for exactly these types of projects have concluded that the cost of the project as EPA has scoped it, not including any additional work, likely will be two *times* the \$800 million that EPA has projected.² AOI calls on EPA to examine its estimates in

² E.g., AECOM 2016. *Portland Harbor Sustainability Project, Environmental Sustainability Analysis Report, Appendix E Cost and Time Analysis Report of EPA Feasibility Study Remedial Alternatives*. Prepared for the Portland Harbor Superfund Site Sustainability Project. September 2016; ; Lower Willamette Group, Cost Evaluation Memorandum

light of these third-party assessments and re-evaluate the likely projected costs so that EPA's decision can be made on a number that can be "taken to the bank."

It will then be very important for EPA to look at its revised projected cost in context. To put that in an Oregon perspective, the \$1.6 billion that these third parties believe EPA's project will likely cost is roughly 75% of the amount the Oregon legislature was able to commit to spend annually on Public Safety and Judicial services in its 2015-17 budget. It is roughly 25% of what it was able to commit to spend annually on K-12 education. If EPA is going to make a choice that requires the expenditure of that amount of funds on the Portland Harbor, it should be sure both of the likely project costs and that the benefits that are certain to be achieved are commensurate with that investment.

EPA also needs to take into account that the costs of the project go beyond the amounts paid to carry it out. The cleanup will be funded in large part by local businesses, local utilities and local and state government. In each of these entities, diverting capital to this massive proposed cleanup effort will mean employees cannot be hired or retained, that other capital investments cannot be made, and that operational and infrastructure efforts will be scaled back or indefinitely delayed. The costs of those choices, although not included in EPA's estimate, will reverberate in the Oregon economy for years.

There will also be a cost to the extent of the interference the project creates that will negatively impact local businesses, the community and the environment. EPA's proposed plan currently calls for significant dredging to take place, every day, around the clock for several months in each of seven consecutive years (and AOI notes that others have estimated the actual project duration to be 11 to 15 years). These dredging operations will restrict the time required for, and the predictability of, shipping within Portland Harbor, which could cause shippers to choose different ports during the course of the project and certainly will increase costs. The construction also will negatively impact recreational opportunities and aesthetic enjoyment of the river. It will impair air quality for years to come and, through the magnitude of the transportation of dredge material that will need to occur, increase the risk of accidental discharges of this material.

b. Benefits

AOI understands that very substantial concerns have been raised by highly experienced environmental professionals with respect to the projections in EPA's Proposed Plan as to the benefits that will be achieved through this \$1 billion+ remedy. It is highly unlikely that EPA's proposed remedial goal of 9 parts per billion of PCBs can be achieved or sustained in an urban waterway, and other preliminary remediation goals appear unsupported and unachievable from a sediment remedy. Very credible concerns have been raised that EPA has overestimated the actual human health risks associated with current levels of in-river sediment contamination, making it appear that EPA's projected remedy will itself achieve greater benefits than it actually will. At the same time, EPA has not acknowledged the source control and natural recovery processes that are already occurring

(August 29, 2016). We understand that both of these assessments have been provided to EPA, and we urge EPA's close review of them.

within the harbor. Although it is not clear from the Proposed Plan, we understand that, after many hundreds-of-millions of dollars will have been spent on cleanup in the name of protecting subsistence fishers, fish advisories will remain in the Lower Willamette River, given the ongoing need for mercury advisories that are established by the Oregon Health Authority and totally unrelated to sources within the Harbor.

AOI requests that EPA review carefully the comments regarding the benefits that are likely to be achieved and reassess what actually can be achieved in Portland Harbor. Spending money for a highly likely remedial goal is one thing; throwing money away in pursuit of an unobtainable goal would be inexcusable.

c. Overall Economic Impact

We understand that EPA has suggested in some public forums that Portland and Oregon actually will economically benefit from the Portland Harbor cleanup. With a membership of the businesses most likely to either benefit or suffer, AOI is certain this is not the case. We have already witnessed that the Superfund label on Portland Harbor has clouded business growth in the Harbor for a long time. Our understanding of the likely overall impacts of the remediation phase is that we will continue to suffer economically. While there will be some local short-term positive effect (and a larger short-term positive effect on the *out-of-state* businesses that will do the majority of the work), the net economic impact of the Portland Harbor cleanup will be negative as businesses divert funds from other local purchases, from their employment base and from doing what it takes to remain competitive. Moreover, the degree of that negative effect is increased with each more expensive alternative. AOI urges EPA to carefully evaluate the analysis of this impact provided by NERA Economic Consulting, which is being provided to EPA through this comment process.³ Rather than providing an economic benefit, the net economic impact on the project on the Portland regional economy will be a loss of jobs, decrease in gross regional product and decrease in local personal income.

d. Role of State in Cleanup

AOI is concerned that EPA's Proposed Plan does not acknowledge the source control work that is currently being very capably handled by the Oregon Department of Environmental Quality (DEQ) and that the Plan appears to be written so as to allow EPA to take over that state-led work. To date, DEQ has conducted the Source Control Evaluations of upland properties, with great success, under the existing EPA-DEQ Joint Source Control Strategy, consistent with the February 2001 Memorandum of Understanding between EPA, DEQ and their federal and tribal partners. As of an update that DEQ provided to EPA in March 2016, DEQ reported it is on track to complete its determinations of the need for source control measures at all upland sites within the Portland Harbor and to have needed measures in place prior to implementation of CERCLA in-water remedies, in order to prevent likely future adverse effects on water or sediment quality. DEQ has a very professional staff that has worked incredibly hard, working closely to cooperate with EPA, to get these sources

³ NERA, 2016. *Portland Harbor Sustainability Project, Economic Impacts of EPA Portland Harbor Superfund Remedial Alternatives Report*. Prepared for the Portland Harbor Superfund Site Sustainability Project. September 2016.

controlled prior to implementation of the Record of Decision (ROD). It is our understanding that the DEQ has been very successful at implementation.

The EPA Proposed Plan, however, appears to assume that EPA will require the cleanup of both upland riverbank and groundwater within its Record of Decision. Based on the little that is included in the Proposed Plan on these areas of cleanup, it appears that EPA intends to ignore all the site-specific work performed by DEQ in favor of “one size fits all” and that EPA believes that their actions for groundwater and riverbanks are the preferred option. This step will undo agreements and understandings DEQ has with upland business owners as to the necessary upland source control actions. It will undermine the credibility of DEQ to engage any other businesses in riverbank or groundwater remediation work along Portland Harbor if, after working to meet DEQ’s demands, those businesses find they are faced with a new and different set of EPA demands.

AOI requests that EPA not include riverbank and groundwater remediation within the scope of its Record of Decision. DEQ’s source control efforts are working, and DEQ should finish what it has started. EPA should not disrupt the longstanding division of authority between DEQ and EPA.

e. Deference to Oregon Standards

As a business group that has paid particular attention to promulgation of Oregon-specific environmental standards over the years, AOI is particularly distressed to see that EPA’s Proposed Plan appears to ignore validly-promulgated Oregon standards, and Oregon’s interpretation of its own standards, in proposing Remediation Goals. EPA is required to consider Applicable and Relevant or Appropriate Requirements (ARAR) in selecting its Preliminary Remediation Goals. Generally, these will be validly promulgated laws or regulations of the state. EPA guidance provides that, when a state has considered federal criteria and adopted different, state-specific standards, the CERCLA process should follow the state standards.⁴ However, in this case, instead of giving due consideration to Oregon regulations, EPA appears to have made arbitrary choices to choose more stringent federal standards, without giving any weight at all to the state-specific factors that led Oregon to regulate in a different way (including with respect to Oregon standards that EPA formally approved!). EPA should correct this in its Record of Decision; in any case where EPA sets a Remediation Goal on the basis of an ARAR, that ARAR should be the applicable Oregon standard.

Oregon also has carefully promulgated beneficial use water quality designations of all its waterways, but EPA appears to be poised to ignore these rules as well. With respect to the Lower Willamette River, Oregon’s beneficial use designation says that the waterway should be protected for drinking water use “with adequate pretreatment.” OAR 340-041-0340, Table

⁴ 53 F.R. 51394, 51442 (Dec. 21, 1988):

“If a state has promulgated a numerical [water quality standard, or “WQS”] that applies to the contaminant and the designated use of the surface water at a site, *the WQS will generally be applicable or relevant and appropriate for determining cleanup levels, rather than [the NRWQC]*. A WQS represents a determination by the State, based on the [NRWQC], of the level of contaminant which is protective in that surface water body, a determination subject to EPA approval.” (Emphasis added.)


340A. Oregon has previously explained exactly what this means: "Waters designated as domestic water supply *** are required to meet general surface water quality standards for toxic materials and turbidity. These waters, while not required to meet drinking water standards in-stream, must be of sufficient quality that it is possible for them to meet drinking water standards with conventional treatment measures."⁵ Oregon rules set forth the adequate pretreatment that is required, all focused on the quality of the water delivered after treatment to the user.⁶ EPA's Proposed Plan has chosen to ignore this aspect of Oregon's beneficial use designation and has apparently decided instead that any groundwater discharging to the river needs to meet this standard at any sampling point within that groundwater, not taking into account either what the concentration would be in-stream or after conventional treatment, assuming the Lower Willamette River at Portland Harbor is ever used for drinking water (and there are no plans to do that).

EPA's Proposed Plan also designates a number of groundwater Preliminary Remediation Goals on the basis that they are "ARARs." In many cases, these are based on Oregon's surface water quality standards. However, Oregon's water quality standards are clearly applicable to the waterbody itself, not to groundwater. Oregon would certainly take its water quality standards into account in determining whether a discharge of groundwater would impair the surface water body itself, by causing an exceedance of the water quality standard in the surface water, and any cleanup decisions made in Portland Harbor should follow that approach. However, the water quality standards are in no sense "ARARs" as applied to groundwater and should not be made "groundwater" remediation goals.

Conclusion

AOI urges EPA to adopt a cleanup plan that is protective of human health and the environment and that is fair to our local businesses, workers, taxpayers and ratepayers. EPA can and should do that by selecting a cleanup alternative that is cost effective and proportional to a realistic assessment of the benefits that will be achieved.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Freese", with a long horizontal line extending to the right.

Mike Freese
Vice President- Environment, Energy and Transportation
Associated Oregon Industries

⁵ Snake River – Hells Canyon TMDL, Submitted - July 2003, Revised – June 2004, approved by the U.S. Environmental Protection Agency (EPA) on March 1, 2004.

⁶ OAR 333-061-0025 et seq.